

Proc II

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

10,077

FILE: B-193721

DATE: May 9, 1979

MATTER OF: Triple "A" South

CNG01448

[Protest of Decision By Department of Navy to Set Aside IFB
for Small Business Firms]

DIGEST:

1. Protest of agency decision to set aside procurement for small business filed after bid opening is untimely.
2. Protest that successful bidder is not responsible because it does not have acceptable insurance will not be considered, since GAO does not generally review affirmative determinations of responsibility.
3. Protest that bid price of small business firm is unreasonably high is not supported in record.
4. Adequate competition was received on small business set-aside where two competitive bids were received from small business firms and agency determined that award price was reasonable.

Triple "A" South (Triple "A"), a large business, protests the decision of the Department of the Navy (Navy), Naval Sea Systems Command, to set aside invitation for bids (IFB) No. N62791-79-B-0012 for small business firms. A6C00175-

The IFB was issued on November 1, 1978, with a bid opening date of November 17. The Navy indicates it did not have sufficient time to publish a synopsis of the solicitation in the Commerce Business Daily, but followed its practice of posting "the bidding particulars" (a description of the work, including ship hull numbers, IFB number, and the date and time of bid opening) on a blackboard at the main offices of the Supervisor of Shipbuilding, Conversion and Repair (SUPSHIP), San

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Diego, California. The Navy also posted the IFB on a bulletin board in a public area of SUPSHIP.

Triple "A" objects to the determination to restrict the procurement to small business firms. It alleges that small business firms have already received more than a fair proportion of contracts for ship repair services. Triple "A" also contends sufficient competition was not received, that the award was not made at a reasonable price, and that the low bidder, Southwest Marine, Inc. (Southwest), is not responsible.

At the outset, we must consider the Navy's position that the protest of the set-aside is untimely and can not be considered on its merits. The Navy, citing our Bid Protest Procedures which provide that a protest based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to bid opening (4 C.F.R. § 20.2(b)1 (1978)), maintains the protest is untimely because it was not filed in our Office until December 14, 1978, almost a month after the bid opening date.

Triple "A" states that it did not protest the set-aside prior to bid opening because it anticipated that competition in the procurement would be inadequate, that this would be apparent to the contracting agency after bid opening, and that the solicitation would then be voluntarily canceled by the agency. On that basis, Triple "A" concludes that it was unnecessary to file a protest prior to bid opening date, although it acknowledges it knew the terms of the IFB before the bid opening date.

This part of the protest is untimely. While Triple "A" obviously would not know the results of the competition until after bid opening, this does not justify its failure to protest the set-aside prior to bid opening, as our procedures require. Since Triple "A" did not object to the solicitation until almost a month after the bid opening date, the protest of the set-aside will not be considered.

In addition, we will not consider Triple "A"'s allegation that Southwest is not responsible because it does not have "acceptable" workmen's compensation insurance coverage. While Southwest has furnished evidence of insurance coverage to the Navy, Triple "A" is challenging the sufficiency of that insurance and the Navy's affirmative determination that Southwest is responsible.

It is our policy not to review protest of affirmative determinations of responsibility, unless fraud is alleged on the part of the procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. Neither of the exceptions applies in this case.

Further, Triple "A" alleges that the price proposed by the low bidder is unreasonably high, and that the award should not have been made for that reason. The record shows that Southwest was low bidder at \$4,775,000, while another small business firm bid \$4,833,807. The Government estimate was \$4,488,383.

The contracting officer must determine, under the circumstances of each case, whether a particular bid price is reasonable. Otis Elevator Company, B-190432, March 15, 1978, 78-1 CPD 204. Our review is limited to the question of whether the contracting officer acted reasonably in making his determination. J.H. Rutter Rex Manufacturing Co., Inc., 55 Comp. Gen. 902 (1976), 76-1 CPD 182.


Here, the contracting officer's determination was reasonable. Southwest's bid was less than seven percent higher than the Government estimate and approximately \$60,000 lower than the other bid received. See CDI Marine Company, B-188905, November 15, 1977, 77-2 CPD 367. While Triple "A" asserts that the Government estimate was unreasonably high because it failed to take into account changes in market conditions and also that Triple "A" would have made "a very competitive offer," we can find no basis to object to the estimate nor do

we consider the speculative offer from a protester who is not eligible for the procurement to be a ground for disturbing the agency's determination that the low price received was reasonable.

Finally, Triple "A"'s allegation that the Navy did not receive adequate competition is also without merit. The Navy has advised us that while only two eligible bids were received, four firms were solicited under the IFB. We have held that adequate competition is normally obtained if two competitive bids are received. Wichita Beverage, Inc., d/b/a Pepsi-Cola and Seven-Up Bottling Company, B-191205, July 6, 1978, 78-2 CPD 11. As two competitive bids were received and the agency determined that the award price was reasonable, we have no basis to object to the agency's conclusion that it obtained adequate competition.

The protest is denied.

Deputy


Comptroller General
of the United States